

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

OLIVIA Y., et al.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, et al.

DEFENDANTS

**UNOPPOSED MOTION TO PLACE EXHIBIT 5 TO ORIGINAL DECLARATION OF  
SHIRIM NOTHENBERG UNDER SEAL**

Plaintiffs' respectfully move this Court pursuant to Local Uniform Civil Rule 79 to place Exhibit 5 to the Declaration of Shirim Nothenberg, Docket number 515-5, filed October 5, 2010, UNDER SEAL. Exhibit 5 is the Termination of Parental Rights Assessment Final Report conducted by Defendants' consultant, dated November 24, 2009 ("TPR Assessment"). Plaintiffs inadvertently included the appendices to the TPR Assessment as part of Exhibit 5. These appendices reveal confidential, individually-identifying information about members or former members of the Plaintiff class, their families, and persons included in their case files of the type covered by this Court's Confidentiality Order dated August 5, 2004, a copy of which is attached hereto as Exhibit A.

Paragraph Two of the Confidentiality Order states:

Any individually-identifying information . . . regarding any plaintiff child, such child's family members, foster family members, and persons included in any case files as the source of information concerning the child – including but not limited to these persons' names, addresses, telephone numbers, social security numbers, dates of birth, and other individual information likely to enable a reasonable member of the general public to ascertain their identities – is hereby designated to be confidential.

The appendices that are included in Exhibit 5 include DFCS records and reports that reveal individually-identifying information concerning minor Plaintiffs. Such confidential information is protected by Paragraph Two of the Court's Confidentiality Order.

Plaintiffs have moved to withdraw the original Declaration of Shirim Nothenberg and the attached exhibits. (Doc. No. 545, filed Dec. 23, 2010.) However, as Defendants have indicated that they may respond to the motion to withdraw, and in order to deal with this matter as expeditiously as possible and to prevent the dissemination of any confidential information, Plaintiffs now move the Court to place Exhibit 5 under seal. Defendants have no objection to sealing Exhibit 5 to the original Nothenberg Declaration.

Accordingly, Plaintiffs request that the Court place Exhibit 5 to the Declaration of Shirim Nothenberg filed October 5, 2010, under seal. A proposed order is attached.

Respectfully submitted, this 27th day of December, 2010.

/s        Jessica Polansky  
Marcia Robinson Lowry (MBN 43991 *pro hac vice*)  
Shirim Nothenberg (MBN 43990 *pro hac vice*)  
Jessica Polansky (MBN 45356 *pro hac vice*)  
CHILDREN'S RIGHTS  
330 7<sup>th</sup> Avenue, 4<sup>th</sup> floor  
New York, New York 10001  
Telephone: (212) 683-2210  
E mail: [mlowry@childrensrights.org](mailto:mlowry@childrensrights.org)

W. Wayne Drinkwater, Jr. (MBN 6193)  
BRADLEY ARANT BOULT CUMMINGS LLP  
One Jackson Place, Suite 400  
188 East Capitol Street  
Jackson, Mississippi 39201  
Telephone: (601) 948-8000  
Facsimile: (601) 948-3000  
E mail: [wdrinkwater@babc.com](mailto:wdrinkwater@babc.com)

John Lang (MBN 43987 *pro hac vice*)  
Attorney at Law  
60 East 42nd Street  
Suite 4600  
New York, NY 10165  
Telephone: (212) 300-0646  
E mail: john.lang@attorneylang.com

Christian Carbone (MBN 43986 *pro hac vice*)  
John Piskora (MBN 44474 *pro hac vice*)  
LOEB & LOEB LLP  
345 Park Ave.  
New York, New York 10154  
Telephone: (212) 407-4000  
E mail: ccarbone@loeb.com

*Plaintiffs' Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 27, 2010, I electronically filed the foregoing Unopposed Motion to Place Exhibit 5 to Original Declaration of Shirim Nothenberg Under Seal with the Court using the ECF system, which sent notification of such filing to the following:

Dewitt L. (“Rusty”) Fortenberry Jr., Esq.  
Kenya Key Rachal, Esq.  
Gretchen L. Zmitrovich, Esq.  
Ashley Tullos Young, Esq.  
BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC  
428 I-55 North  
Meadowbrook Office Park  
Jackson, MS 39211  
(601) 351-2400

Harold E. Pizzetta, III, Esq.  
Assistant Attorney General  
General Civil Division  
Carroll Gartin Justice Building  
430 High Street  
Jackson, Mississippi 39201

*Attorneys for Defendants Haley Barbour, et al.*

/s Jessica Polansky